

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 11, 1999 at
9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 47; HB 186, 3/4/1999
HB 526; HB 639, 3/4/1999
HB 640, 3/4/1999
Executive Action: HB 526; HB 615
HB 639; HB 640

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON HB 47

Sponsor: REP. SHIELL W. ANDERSON, HD 25, LIVINGSTON

Proponents: Frank Cote, Deputy Insurance Commissioner
Greg Van Horssen, State Farm
Jon Metropoulos, Farmer's Insurance Group
Jacqueline Lenmark, American Insurance Assoc.
Susan Witte, Blue Cross-Blue Shield

Opponents: None

Opening Statement by Sponsor:

REP. SHIELL W. ANDERSON, HD 25, LIVINGSTON. He presented his bill and handed in the written copy **EXHIBIT (bus55a01)**.

{Tape : 1; Side : A; Approx. Time Counter : 4}

Proponents' Testimony:

Frank Cote, Deputy Insurance Commissioner. The original bill that was proposed by the Department had a five year cap and it didn't have the additional language about fraud or concealment being capped at five years. Some of the people from the industry had some concern and thought the statute of limitations should be three years. One of our attorneys looked at the language and agreed with them. We then supported the amendments in the House. Then we found out that we were all wrong with this. The statute of limitations of securities is five years and should remain five years. I would like to hand in the amendments from our Department **EXHIBIT (bus55a02)**. Without these amendments, we could not support the bill. The amendments return the cap to five years. I do hope the committee will pass this bill with the amendments.

Greg Van Horssen, State Farm. We support the bill without the amendments; however, we would like to have the opportunity to review the reasoning of their chief legal counsel and be available at the executive action meeting to present our thoughts on these amendments.

Jon Metropoulos, Farmers Insurance Group. We, too, support the bill as it is and would like the opportunity to review the reasoning of their chief legal counsel. I do believe it is flawed and after we do review it, there will be some detailed discussions which we will have to go through.

Jacqueline Lenmark, American Insurance Assoc. The AIA supports **HB 47** as it is currently drafted with the amendments that are currently incorporated in the bill. We proposed those amendments in the House. We would not support the bill if those amendments were removed. Mr. Cote has been very good about making sure that

we all received a copy of his chief legal counsel's legal memorandum. I have reviewed that memo and as it happens many times, with lawyers, I disagree with the conclusions that are there. What we have not yet had an opportunity to do is to sit down and see if we are misapprehending the effect of this bill on current statute or if we are misapprehending the effect of the amendments that are contained in the bill. I, too, would urge the committee to delay action. If Mr. Chairman would allow us to talk through our disagreements, that would be helpful for all concerned. The statute as crafted in this bill is clear; the law is clear as it stands unamended. We would not support the amendments that are being suggested today.

Susan Witte, Blue Cross-Blue Shield. Our chief legal counsel, Bill Jansen, did have a conversation late last night with Mr. Cote and Mr. Jansen did have some of the same concerns that the other insurance lobbyists did with his interpretation of how the statute of limitations worked with the amendments put on by the House as opposed to the five year statute of limitations that is before you today. We don't see any huge problem with it. It just caps it all at five years. Right now the insurance code doesn't have a specific statute of limitations. You must wade through some other titles to find this. Just to make life easier for the Department of Insurance, our chief counsel agreed with Mr. Cote. But if the committee does want additional time, that is a good idea.

{Tape : 1; Side : A; Approx. Time Counter : 10.7}

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. ANDERSON closed. As far as time goes, if the committee has some time to allow these people to come together, that would be good. Otherwise, I believe that it would be most appropriate to pass the bill as it is. If there are problems, they could be addressed in the next session. Thank you. **SEN. COCCHIARELLA** will carry the bill on the Senate Floor.

{Tape : 1; Side : A; Approx. Time Counter : 13}

Sponsor: REP. RAY PECK, HD 91, HAVRE

Proponents: Bob Pyfer, MT Credit Unions League
John Cadby, MT Bankers Assoc.

Opponents: None

Opening Statement by Sponsor:

REP. RAY PECK, HD 91, HAVRE. I bring for your consideration HB 186 which is at the request of the MT Credit Union Legislative Committee. It is to correct what appears to be an oversight the legislature passed last session. It concerns medical savings and first home buyer accounts. Bankers did not oppose this in the House. On page 2, lines 18 and 19, it provides for the distribution of the principal and interest to the estate and the bill adds the provision that they could charge a fee for the service of these accounts. The amount of fee would be left to the discretion of the credit unions. These accounts were made available to citizens with the idea that these medical savings accounts (MSA's) would allow people to put money aside for medical expenses and escape some of the tax liability that goes with it. These accounts have not been all that popular because credit unions don't market them very much. It is work and there has been no fee attached to it.

Proponents' Testimony:

Bob Pyfer, MT Credit Unions League. This bill just corrects a couple of oversights in both the MSA's and the first time home buyer account laws. The MSA's are designed to allow tax deduction for contributions up to \$3000 when the money is used for eligible medical expenses and the first time home buyer account law provides an identical program where the money is used to pay the down payment or closing costs on a first home. Neither one of these laws as originally drafted, allows for a POD (pay on death) beneficiary to be attached to the account. This was an oversight but through the rulemaking process at the Department of Revenue, they wanted this to be put into the regulations. We offered to come in and put it into legislation so it is clear that a POD can be used on both kinds of accounts. A POD designation of beneficiary simply allows the money in the account to go directly to the beneficiary when the owner of the account dies without going through the estate. The first thing this bill does is allows the POD beneficiary designation. Many credit union members want to have all of their accounts that

aren't in joint tenancy with right of survivorship put into a POD beneficiary designation. That way, all the money in their accounts goes either to a joint owner with right of survivorship or to a beneficiary, and does not have to go through their estate. These changes are found on page 2, lines 18 and 19 and page 5, line 27.

These two accounts both provide for a self-administered account. This is where the taxpayer, rather than the financial institution, does the reporting to the Department of Revenue. This has turned out to be the most popular form of the account. The problem is that both of these statutes prohibit a fee from being deducted from a self-administered account. Apparently, it was thought somehow people would actually hold their own accounts and the prohibition was in there to prevent a taxpayer from increasing his tax deduction by charging himself an administrative fee. How things have evolved is that even these self-administered accounts are not being held by themselves but are being put in financial institutions. Primarily they would like them to be in a checking account. But you can't charge a fee for it because it is a self-administered account. In order to insure the availability of these accounts, it is important to allow these reasonable and customary charges to be imposed. This is not imposing any new fee, it is just the normal checking account fee. These changes are found on page 4, lines 2 and 3 and on page 6, lines 21 and 22.

There is an amendment **EXHIBIT (bus55a03)** that I would like to propose. The amendment is to address a private opinion letter from our federal regulator, the NCUA (the National Credit Union Administration). The NCUA private opinion letter says that federally chartered credit unions cannot act as an account administrator for a Montana Medical Savings Account. As I mentioned earlier, there are two different types of MSA's. There is the administered MSA and the self-administer MSA. An administered MSA has a separate account administrator who could be a CPA, an attorney, a financial institution, etc. For the self-administered account, there is no separate account administrator. The account owner is the administrator. Both types of these accounts are being held in financial institutions. Among our credit unions that are handling MSA's, we are aware of only one that is actually acting as the account administrator. The others just hold self-administered accounts. The credit union, which is the administrator, is doing the routine reporting to the Department of Revenue. The NCUA opinion letter will prevent that one credit union from continuing the act as administrator and would also prevent future credit unions from doing this. The amendment simply clarifies the intent of an amendment that we joined with the bankers in the last session in putting into the law to make it crystal clear that financial

institutions are not acting as fiduciaries or are responsible for determining eligibility or non-reimbursability of medical expenses. We feel the NCUA misinterpreted our Montana law and the amendment. So this amendment makes it very clear what the intent is and NCUA will ultimately allow federal credit unions to act as account administrators.

I just noticed that this amendment should be reflected in the title of the bill. I do have language that I will provide to Mr. Campbell. It would say "Clarifying responsibilities of financial institutions acting as account administrators of Medical Savings Accounts." We do urge a concur in recommendation.

John Cadby, MT Bankers Assoc. We concur in all that Mr. Pyfer has said and hope that you will support the bill. There may be one typographical error on amendment number 3. It should say line 26 not 24.

{Tape : 1; Side : A; Approx. Time Counter : 25.8}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **Bob Pyfer** if she could do her MSA and keep the money at home and do the reporting. **Bob Pyfer** said the idea was to get these MSA's off the ground. There was so much liability being perceived among financial institutions for having to determine eligibility of expenses and non-reimbursable. That is something that no one wanted to get into. Major amendments came in to allow for this self-administered account. He was not sure if anyone understood how it was going to work. But as it has evolved, people came to their financial institution to open up an MSA. The amendments reduced this liability for the institutions and people set up their own self-administered accounts. So to answer your question, I don't think that would be feasible. People want interest paid on their accounts, etc.

SEN. MIKE SPRAGUE asked **Mr. Pyfer** if an MSA would be an interest-bearing account. **Mr. Pyfer** said "yes". Also there is no set fee for these accounts in the bill. This bill just removes the prohibition for credit unions to charge a fee for these self-administered accounts. They did not want to regulate the amount of the fee. That will be left up to the financial institution.

SEN. JOHN HERTEL asked **Mr. Cadby** if he had something to say. **Mr. Cadby** said there probably won't be any fees charged at all for the self-administered accounts. Last year he opened a checking

account for \$500 in his name and asked to have the letters MSA after his name. At the end of the year, he reported \$503 still in the account, having earned \$3 in interest. On the form from the State Department of Revenue, he filled it out. It is on the honor system. So you could work out of a shoe box. At year's end, one must report to the IRS what was spent up to \$3000. Most banks offer checking accounts free with a minimum balance of \$100. Competition has made it so that self-administered accounts should not have much of a fee, if any.

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Closing by Sponsor:

REP. PECK closed. Credit unions are run by local boards, so answers to questions could vary as the credit unions have different rules and regulations. It seems that it would be highly unlikely to have fees attached. The bill is reasonable and I am actively involved in my own credit union. Thank you for a good hearing. **SEN. SPRAGUE** will carry the bill on the Senate Floor.

{Tape : 1; Side : B; Approx. Time Counter : 0}

HEARING ON HB 526

Sponsor: **REP. JEFF MANGAN, HD 45, GREAT FALLS**

Proponents: **Bernie Harrington, President, MT Financial Service Centers Assoc.**
Kelly Reisbeck, Advance Express, Helena
Judy Will, Cash Advantage, Helena
Darla Agtarap, Cash Advantage, Helena
Barbara Carpenter, Cash Advance, Bozeman
Don Hutchinson, Commissioner, Banking & Finance Div.

Opponents: **None**

Opening Statement by Sponsor:

REP. JEFF MANGAN, HD 45, GREAT FALLS. I bring to you today **HB 526**. This is a consumer protection bill. It focuses on the delayed deposit business. They take in post-dated checks. The

number of these businesses has been increasing greatly over the past year. This bill moves to regulate them. There have been complaints that the interest on the delayed deposit is exorbitant. In a one month period, one place was charging \$47 on \$100 loan. Then the charges kept going up depending on how many rollovers and how much money was being loaned. **REP. JOE QUILICI** had a similar bill and so we put the two bills together and out came **HB 526**.

This bill allows for a minimum loan of \$50 and a maximum loan of \$300. This is par for the industry. It allows for a fee of up to 25% of the value of the check with a maximum term of 31 days. It provides for no rollovers which is very important. It provides for consumer notification of process, fees, regulation and complaint. It provides for state licensure and examination through the Department of Commerce, Division of Banking and Finance. A person can have a maximum of two loans at one time, but not to exceed the \$300 limit. States are scrambling to regulate this industry around the country. Currently four states prohibit these transactions. Thirteen states use regulations such as is being proposed. The other states are working on this issue. We are fortunate here because we have the industry behind us. We have worked with them and the Department of Commerce. Other states allow fee amounts from 5% to 25% as this bill will do.

The legitimate providers of delayed deposit loans have been doing a fine job for the past few years. It has been relatively quiet and not defrauding people. But in the past year we have had a tremendous influx of these delayed deposit outfits coming from other places. With no regulations, they are charging outrageous fees. I urge your favorable consideration.

{Tape : 1; Side : B; Approx. Time Counter : 7.5}

Proponents' Testimony:

Bernie Harrington, President, MT Financial Service Centers Assoc.

Our members are delayed deposit lenders. We have seen a great growth of this industry in the past year and are interested in seeing regulations for consumer protection. We are good business people and are in the business to help people when they really need it. We don't want to get a black eye from others who come into Montana to rip the people off. We hope to work with the Department of Commerce as far as the rulemaking goes.

Kelly Reisbeck, Advance Express, Helena. I am here today to say that I am in support of **HB 526**.

Judy Will, Cash Advantage, Helena. I am in support of **HB 526**.

Darla Agtarap, Cash Advantage, Helena. We have been licensed as a consumer loan center from the first day of our operation. We are pleased with our organization and are in support of this bill.

Barbara Carpenter, Cash Advance, Bozeman. We support **HB 526**.

Don Hutchinson, Banking Commissioner, Banking & Financial Division, Department of Commerce. We will work closely with the industry. Drafting the bill gives us what we need to regulate the industry and I think it is a fair bill for the consumers of Montana. We support the bill. Thank you.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked **Commissioner Hutchinson** about pawn shops that do loans. Are they covered under the same restrictions? **Commissioner Hutchinson** said they would be eligible to be licensed under this bill if they want to do the delayed deposit loans. They would not be able to do delayed deposit loans under their license as a pawn broker.

Closing by Sponsor:

REP. MANGAN closed. I did forget to bring up one thing. I do have some technical amendments **EXHIBIT (bus55a04)**. Also, currently, pawn shops are providing this service and initially there was some reservation about whether pawn shops should be able to do this. A pawn shop loans money on a collateral basis; this service provides money on a non-collateral basis. So if they choose to do both services, they would have to have two licenses. Thank you for a good hearing. **SEN. LYNCH** will carry the bill on the Senate Floor.

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HEARING ON HB 639 AND HB 640

Sponsor: **REP. JEFF MANGAN, HD 45, GREAT FALLS**

Opening Statement by Sponsor: I bring before you **HB 639 and HB 640** and request that they be tabled.

EXECUTIVE ACTION ON HB 639

Motion/Vote: SEN. MCCARTHY moved that HB 639 BE TABLED. Motion carried unanimously. 5-0

EXECUTIVE ACTION ON HB 640

Motion/Vote: SEN. MCCARTHY moved that HB 640 BE TABLED. Motion carried unanimously. 5-0

EXECUTIVE ACTION ON HB 526

Motion: SEN. MCCARTHY moved that HB 526 BE CONCURRED IN.

Discussion: Motion/Vote: SEN. MCCARTHY moved that HB 526 BE AMENDED (Exhibit 4). Motion carried unanimously. 5-0

Motion/Vote: SEN. MCCARTHY moved that HB 526 BE CONCURRED IN AS AMENDED. Motion carried unanimously. 5-0

SEN. J.D. LYNCH will carry the bill on the Senate Floor.

{Tape : 1; Side : B; Approx. Time Counter : 18.5}

EXECUTIVE ACTION ON HB 615

Motion: SEN. COCCHIARELLA moved that HB 615 BE CONCURRED IN.

Discussion: Motion: SEN. BERRY moved that HB 615 BE AMENDED, HB061502.abc **EXHIBIT**(bus55a05) .

Discussion: Mr. Campbell explained the amendments. Basically, the wine industry is taken out of the bill and leaves it directly dealing with the beer industry. SEN. SPRAGUE said that he had asked for some research to be done and he had received it back. Other states currently regulate both beer and wine together. Therefore, it does not seem unusual to have these two business addressed at the same time in this bill. If this weren't important or a problem like the wine people indicated, why are

they so worried about being regulated the same as the beer industry under this bill.

SEN. COCCHIARELLA said that the law is already sort of in statute and this bill clarifies the venue for beer and wine in Montana. It makes it clear that they have to come to Montana when there is a dispute and to have a trial by jury. **Mr. Campbell** said that the bill will state statutorily that a dispute must be litigated in Montana. Right now, a contract provision will state which jurisdiction a dispute would be settled in. The question of a jury trial would then be determined by the jurisdiction venue.

SEN. COCCHIARELLA then said if this law is passed, would that prohibit contract language between two entities from having the venue someplace else unless it causes an extreme burden on the Montana business. **Mr. Campbell** said that Montana law says that with respect to these agreements, jurisdiction must be in Montana. That would control over contract provision. If another state had a similar law, then it would seem the issue of extreme burden would come into play and possibly decide the venue for the lawsuit.

{Tape : 1; Side : B; Approx. Time Counter : 26}

SEN. SPRAGUE asked if a contract were signed under duress, would this bill force a brewery or winery to come to Montana for the venue. It seems that it would. **Mr. Campbell** said that if he were the Montana distributor and there is a big thick contract with the venue in New York, but knew that in Montana law, the venue would be Montana, he would go to a Montana court and ask for a decision based upon the statute that this bill would provide. He believes that the Montana court would rule in his favor.

SEN. BERRY said that when two parties negotiate, this bill will stop negotiations. **SEN. COCCHIARELLA** said that the Canadagua Winery just walked in and took their wine away from a distributor and left. So there was no contract they cared to even follow. If that distributor wanted to fight that, they would have to follow Canadagua to New York. Why should a small Montana businessman not have the protection of being able to settle a lawsuit in Montana. Our laws should protect Montanans.

Vote: Motion that HB 615 BE AMENDED failed 2-5. SENATORS BERRY, COCCHIARELLA, MCCARTHY, ROUSH AND SPRAGUE voted no.

**Vote: Motion that HB 615 BE CONCURRED IN carried unanimously.
7-0**

SEN. BOB KEENAN will carry the bill on the Senate Floor.

ADJOURNMENT

Adjournment: 10:50 A.M.

SEN. JOHN HERTEL, Chairman

March 11, 1999

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MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus55aad)